the Master of the Rolls, that the right of access to the inn-yard has been interfered with in a way most prejudicial to the plaintiff. Nothing can be much more injurious to the owner of an inn than that the way to his yard should be constantly obstructed by the loading and unloading of heavy waggons. If a person who was going to put up his horses at the inn was stopped by the loading or unloading of waggons, he would probably at once go to another inn. Then it was said that the plaintiff alleges an obstruction caused by several persons acting independently of each other, and does not show what share each had in causing it. It is probably impossible for a person in the plaintiff's position to show this. Nor do I think it necessary that he should show it. The amount of obstruction caused by any one of them might not, if it stood alone, be sufficient to give any ground of complaint, though the amount caused by them all may be a serious injury. Suppose one person leaves a wheelbarrow standing on a way, that may cause no appreciable inconvenience, but if a hundred do so, that may cause a serious inconvenience, which a person entitled to the use of the way has a right to prevent; and it is no defence to any one person among the hundred to say that what he does causes of itself no damage to the complainant."

I think in applying the principles of those two cases, although they deal with different torts, I would say that though in this case individually the acts of each defendant are not sufficient by themselves to cause the damage done, the acts of both the defendants having caused the damage to the plaintiffs, they should therefore be liable.

The next point is how I should apportion the liability. Although the bulk of the silting and most of the debris came from the 2nd defendant's land, I am inclined to apportion the damages on a 50 — 50 basis. There will, therefore, be judgment against both defendants for the plaintiffs for $2,500 and costs.

Judgment accordingly.

Solicitors: *Drew & Napier; M. Ismail & Co.; Donaldson & Burkinshaw.*

MOHAMED IKHAWAN v. JOHAR & ANOR.

[O.C.J. (Ong F.J.) July 7, 1965]

[K.L. — Civil Suit No. 806 of 1963]

Damages — Personal injury — Loss of binocular vision of left eye — Assessment of damages.

The plaintiff an infant just under 14 years lost the binocular vision of his left eye in a road accident. The infant was of rather under-average intelligence and had been working in his father's paddy fields since he was 13 years old, rather than continuing in school after standard five in Malay. There was no evidence of his earning any wages beyond what a parent ordinarily provides for a child of the necessaries of life. He was no less able after the accident to perform with the aid of one eye all the tasks he had been doing before the accident.

Held: that a sum of $12,500 was adequate. This sum was intended to bring him a steady income for life and to cover also a degree of pain from all injuries sustained in the accident, further discomfort and cosmetic deformity.

Cases referred to:—

(1) *Warren* v. *King* [1964] 1 W.L.R. 1; [1963] 3 All E.R. 521 and 793.

(2) *Dimmock* v. *British Railways Board* (1965), *The Times*, June 30, 1965.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

Au Ah Wah (Treasury Solicitor) for the defendants.

Ong F.J.: The plaintiff lost the sight of his left eye in a road accident on January 29, 1963, when he was just under 14 years old, and I awarded him $12,500 as general damages, in addition to the sum of $231 by way of special damage and costs to be taxed.

I had given the matter of quantum of damages careful thought overnight when reserving judgment till the following day. I bore in mind the principles enunciated by their Lordships in *Warren* v. *King*,[1] that "awards must be reasonable and assessed with moderation", that what is fair and reasonable "should meet the plaintiff's requirements", that "damages must not be assessed on the basis that everything in life would go most favourably for a plaintiff whose future has been affected by injury" and that fair compensation should be "fair as between the negligent person and his victim. Not punishment of him, but what he ought in fairness to pay."

Passing from the general to the particular, my observation of the boy led me to conclude that he is a person of rather under-average intelligence. Confirming this is the fact that he and his parents thought that he could be of better service working in his father's paddy-fields at 13 than continuing in school after standard five in Malay, with some thought for the future.

There was no evidence of his earning any wages beyond what a parent ordinarily provides to a child of the necessaries of life. In an agricultural community, where this boy has lost interest in the benefits of education, I think his lot in every likelihood is that of a farmer when he grows up. I am not bound, nor do I feel inclined, to speculate on what he might possibly become, should "everything in life go most favourably for him." To a farmer the loss of an arm or a leg by amputation is, in my view, far more serious than loss of vision of only one eye, when the other is unimpaired.

It is true that sight is precious. But what was lost here is not his sight altogether, but only binocular vision, which I do not think will in any way affect his earning capacity. Loss of binocular vision would be disastrous for a surgeon who has to perform delicate operations. Even a watch-repairer constantly applies only

the master-eye to the magnifying glass. The plaintiff, however, is no less able today to perform with the aid of one eye all the tasks he had been doing before the accident.

$12,500 should buy the plaintiff at least 5 acres of good paddy-lands, bringing him a steady income for life. I do not think that very many farmers in this country own individually that much land to support a whole family. Should this youth be improvident when he attains the age of majority and claims his money from the Public Trustee, I doubt whether twice $12,500 would do him any good. In endeavouring to hold an even balance between plaintiff and defendant, I do not feel that I had been parsimonious with other people's moneys, even though I had no intention of being lavish in dipping into their purse. The $12,500 was intended to cover also a degree of pain from all injuries sustained in the same accident, the future discomfort and cosmetic deformity, which I did not leave out of account.

I assessed the items of special damage as best I could on the evidence.

Since this judgment was written I have read in the *Times* Law Report of June 30, 1965, that a workman, aged 53, employed by British Railways, was awarded £2,250 agreed general damages for the loss of his left eye: (*Dimmock* v. *British Railways Board* (2)). Considering the higher cost of living in England, and the different economic conditions prevailing in the two countries, it seems to me that £1,500, or two-thirds of the English award, is not an unreasonable sum to compensate the plaintiff for the unfortunate accident.

Order accordingly.

Solicitors: *Murphy & Dunbar.*

RE DING DO CA, DECD. NGOI SUI ING & ORS. v. WONG SWEE KIEW & ORS.

[O.C.J. (Ali J.) July 14, 1965]

[Ipoh — Perak Civil Suit No. 158 of 1962]

Marriage — Intestate contracting Christian monogamous marriage — Conversion to Buddhism — Subsequent polygamous marriage according to Chinese custom during subsistence of first marriage — Whether second marriage valid — Status.

The deceased went through a Christian marriage with the 1st defendant in 1923 and a second marriage with the 1st plaintiff according to Chinese custom in 1937. The deceased died sometime in 1949 intestate and there was evidence that sometime before he went through the second marriage, he had embraced Buddhism. In this action the plaintiffs sought declarations that they were entitled to share in the estate of the deceased as beneficiaries. The questions for the determination of the court were whether: (1) the subsistence of a Christian monogamous marriage would operate to prevent the deceased from entering into a subsequent valid marriage, and (2) the deceased, who was a Christian during his life time could validly enter into a polygamous marriage.

Held: (1) the subsistence of a Christian monogamous marriage would not constitute a bar to the deceased from subsequently contracting a marriage which would be valid by his personal law;

(2) the evidence that the deceased had embraced Buddhism some time before he went through the second marriage removed any obstacle there might be in coming to the conclusion that the 1st plaintiff and her children were the lawful widow and children of the deceased.

Cases referred to:—

(1) *Re Loh Toh Met, decd.*, [1961] M.L.J. 234.

(2) *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi* [1956] M.L.J. 257 at p. 263.

CIVIL SUIT.

E. K. Yeap for the plaintiff.

P. P. Dharmananda for the defendants.

Ali J.: The plaintiffs in this action are seeking declarations that they are entitled to the beneficial shares in the estate of Ding Do Ca, deceased, who died intestate some time in March, 1949. Letters of administration were granted to the 1st defendant, as the lawful widow of the deceased, and the beneficiaries disclosed in the petition for administration were the 2nd and the 3rd defendants as lawful children. The estate of the deceased consists mainly of immovable property which, as far as I am aware, had not been distributed at the date of the trial.

Although in their pleadings the plaintiffs claim several reliefs, in my opinion those which are of primary importance are for declarations as to the status of each of the plaintiffs in relation to the deceased's estate. It is part of the plaintiffs' case that the deceased left not one but two widows surviving him and, therefore, by reason of the provisions of sub-section (2) of section 6 of the Distribution Ordinance, 1958, the two widows and all the children by the two marriages are entitled to their distributive shares of the estate. The defence pleadings, however, merely concerned with the refusal to recognise the plaintiffs as lawful beneficiaries of the deceased. In the event, there was some controversy as to what were the real issues for determination. The evidence of the parties at the hearing was merely confined to the proof that the 1st plaintiff or the 1st defendant, as the case may be, had gone through a marriage ceremony with the deceased intestate. For the purpose of the present proceedings, it is sufficient if I say that I accept the evidence of both parties as showing that the deceased intestate did go through a Christian marriage with the 1st defendant on the 28th August, 1923, and in 1937 again went through another form of marriage with the 1st plaintiff according to Chinese custom. I do so accept despite the defence